

(2010) 04 AP CK 0075

In the Andhra Pradesh High Court

Case No : Second Appeal No. 202 of 2010

Malireddy Sreeramulu Reddy and Malireddy Jayamma (died)	APPELLANT
Vs	
Malireddy Ramakrishna Reddy and Others	RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 4 ALD 227 : (2010) 4 ALT 632

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J. Seshagiri Rao, for the Appellant; V.R. Reddy Kovvuri, for Respondent Nos. 2, 3 and 5, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The unsuccessful plaintiffs in O.S. No. 658 of 2002 on the file of the Principal Junior Civil Judge, Kadapa, filed this second appeal. The suit was filed against the respondents herein for the relief of partition of the suit schedule property, an extent of Ac. 2.81 cents of land in Chinnamachupalle Village of Chennur Mandal, Kadapa District into 5 acre shares and allotment of one share each to the appellants and balance to the defendants, according to their entitlement.

2. The case of the appellants is that the Malireddy Bali Reddy is the common ancestor and through his first wife, he begot Veera Reddy, the father of respondents 2, 3 and 5. After the death of the first wife, Bali Reddy married Narayanamma, and through her he got the first plaintiff and three sons by name, Ramakrishna Reddy (1st respondent), Subba Reddy, husband of the 2nd appellant, Sreenivasulu Reddy, the father of the 4th respondent. In addition to them, three daughters are also said to have been begotten. According to the plaintiffs, an extent of Ac. 12.68 cents of land in various survey numbers of the same village was purchased in the name of Veera Reddy, and except the suit schedule property, rest of the land was sold, over the period of time. It was alleged that the suit schedule property though was purchased in the name of

Veera Reddy, belongs to the joint family.

3. The suit was resisted mainly by respondents 2, 3 and 5. According to them, Veera Reddy was fostered by the sister of Bali Reddy, who was residing in a different village, and with the funds made available by her, the suit schedule property and other lands were purchased by Veera Reddy. They have also pleaded that the partition of the joint family took place long back, and the suit schedule property was never the subject-matter of partition. The trial Court dismissed the suit, through its judgment dated 04-07-2005. Aggrieved thereby, the appellants filed A.S. No. 89 of 2005. During the pendency of the appeal, the 2nd appellant died, and the matter was pursued by the 1st appellant alone. Through its judgment dated 19-11-2009, the lower Appellate Court dismissed the appeal.

4. Sri J. Seshagiri Rao, Learned Counsel for the appellants submits that the trial Court and the lower Appellate Court have not appreciated the oral and documentary evidence from the correct perspective. He contends that the relationship between the parties was not disputed at all, and the very fact that part of the suit schedule property is in possession and enjoyment of the 1st defendant, discloses that it is treated as joint, but the partition has not taken place, as per law. Learned Counsel submits that though Ex. A-1, through which the suit schedule property was purchased, is in the name of Veera Reddy, it was for the benefit of the entire joint family.

5. On the basis of the pleadings before it, the trial Court framed three issues, viz.,

1) Whether the plaintiffs and defendants are living in joint status as joint family members?

2) Whether the suit schedule property was purchased by Veera Reddy for himself and defendants?

3) Whether the plaintiffs are entitled to partition and separate possession of schedule property?

6. On behalf of the appellants, PWs 1 to 5 were examined, and Exs. A-1 to A-5 were marked. On behalf of the respondents, DWs 1 to 4 were examined and Ex. B-1 was filed. On the dismissal of the suit, the appellants filed A.S. No. 89 of 2005, and in that appeal, the following two points were framed:

1) Whether the suit schedule property is HUF (Hindu Undivided Family) property?,

2) To what share each of the parties is entitled to?

7. Both the points were answered against the appellants.

8. There is no dispute as to the relationship between the parties. Had there not been any partition among the children of late Bali Reddy, the appellants were certainly entitled to seek partition. Before both the Courts, the appellants, on the

one hand, and respondents, on the other hand, agreed that, partition has taken place among various coparceners. The exact time at which the partition took place, and the other particulars thereof were not placed before the Courts. The fact, however, remains that partition has taken place, and each coparcener is in possession and enjoyment of his respective share.

9. Once partition takes place in a joint family, the occasion to seek further partition would arise, if only certain items were kept joint, with the consent of the parties, and partition of items so kept aside has become necessary. The 1st appellant as PW-1 did not even state that the suit schedule property was kept aside, when the partition within the family took place. Hence, there is a serious doubt as to the very maintainability of the suit.

10. Another possibility for seeking partition is where the property, which otherwise was liable to be partitioned; escaped the attention of the parties. In case the suit schedule property was held by the joint family, but was not subjected to partition, there is scope for seeking partition thereof. For that, the appellants must prove that the suit schedule property was held by the joint family.

11. The record discloses that the appellants and rest of the family members are residents of Tipireddypalli Village, of Chapadu Mandal. The suit schedule property, however, is in Chinnamachupalle Village of Chennur Mandal, i.e. the place of the residence of the sister of the common ancestor, by name, Bali Reddy. It is not in dispute that she fostered Veera Reddy and he lived in that village for the rest of his life. It was elicited through PW-1 that the sister of Bali Reddy had properties and it was with the funds made available by her, that Veera Reddy purchased Ac. 12.68 cents of land. Therefore, the property was never held or owned by the appellants, headed by Bali Reddy or any of his children.

12. There is sufficient evidence to establish that the suit schedule property was held exclusively by Veera Reddy. Exs. A-5 and B-1 are the sale deeds executed by Veera Reddy, through which he sold part of the properties purchased under Ex. A-1. The plaint schedule property is the remaining part. Viewed from any angle, the plea of the appellants cannot be sustained. Both the Courts below have appreciated the evidence correctly and arrived at proper conclusions.

13. This Court is not inclined to interfere with the concurrent findings of fact, and no substantial question of law arises for consideration. The Second Appeal is accordingly dismissed.

14. There shall be no order as to costs.